



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 9, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Aged/Disabled (HCB) Title XIX Waiver Services Program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, the number of homemaker service hours is determined based on the Level of Care (LOC). The Level of Care is determined by evaluating the Pre-Admission Screening Form (PAS) and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units/hours which is reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2)

Information submitted at your hearing reveals that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "C" rating. As a result, you are eligible to receive four (4) hours per day or 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
CCIL

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 07-BOR-906**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 9, 2007 for \_\_\_\_\_. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on May 3, 2007 on a timely appeal filed March 6, 2007.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The program entitled Aged/Disabled Waiver is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program services as opposed to being institutionalized.

**III. PARTICIPANTS:**

\_\_\_\_\_, Claimant  
\_\_\_\_\_, Claimant's granddaughter and Power of Attorney  
\_\_\_\_\_, RN, Case Manager, Coordinating Council for Independent Living (CCIL)  
\_\_\_\_\_, Case Manager, CCIL  
\_\_\_\_\_, RN, \_\_\_\_\_ Senior Center  
\_\_\_\_\_, Homemaker, \_\_\_\_\_ Senior Center  
\_\_\_\_\_, RN, West Virginia Medical Institute  
Jenni Sutherland, Licensed Social Worker, Bureau of Senior Services (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Agency was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1 and 503.2.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1, 503.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on February 22, 2007
- D-3 Notice of Decision dated February 27, 2007
- D-4 Medical Necessity Evaluation Request

**VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged/Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on February 22, 2007 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 23 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "C" (23 points)- eligible for four (4) hours per day or 124 hours per month of homemaker services. It should be noted that the Claimant previously qualified

as a Level of Care “D”- eligible for five (5) hours per day or 155 hours per month of homemaker services.

- 3) The Claimant was sent notification on February 27, 2007 (D-3) advising her of the proposed reduction in hours.
- 4) Witnesses for the Claimant contended that additional points should be awarded in the following areas:

***Mental disorder-*** Witnesses for the Claimant contended that she is withdrawn, depressed and reports feelings of worthlessness. At the time of the PAS, she had been prescribed 5 milligrams of valium daily, but this information was not provided to the WVMi nurse. The nurse indicated that no diagnosis of depression was provided at the time of the assessment.

***Bathing, dressing and grooming-*** Witnesses for the Claimant testified that the Claimant should be classified as requiring total care in the areas of bathing, dressing and grooming as she likely overstates her abilities. The Claimant had been rated as requiring physical assistance in these areas at the time of the PAS. The [REDACTED] Senior Center nurse testified that the Claimant had just been released from a nursing home at the time the PAS was completed and had been feeling better than usual. The Claimant testified that she needs more assistance than she realizes and that she is now unable to cut her own nails. The Claimant’s homemaker and neighbor assist the Claimant with dressing. The homemaker reported that the Claimant can wash one of her arms, but the homemaker sometimes rewashes it. Witnesses noted that the Claimant’s condition has deteriorated.

The WVMi nurse testified the Claimant had reported that she sits on a chair during her shower and is able to wash her own chest. The Claimant had reported that she is able to complete her own nail and teeth care. She had indicated that she participates to an extent in her dressing, but requires much assistance. The Claimant had also reported needing assistance with pulling trousers over her feet and with her shirts.

The [REDACTED] Senior Center nurse, CCIL nurse and homemaker were present on the date of the assessment.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (D-1): There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:

#23- Medical Conditions/Symptoms- 1 point for each (can have total of 12 points) (must be based on medical evidence presented by appropriate medical professionals)

#24- Decubitis- 1 point

#25- 1 point for b., c., or d.

#26 Functional abilities

Level 1- 0 points

Level 2- 1 point for each item a. through i.

Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)

- Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
- #27 Professional and Technical Care Needs- 1 point for continuous oxygen
- #28 Medication Administration- 1 point for b. or c.
- #34- Dementia- 1 point if Alzheimer's or other dementia
- #34- Prognosis- 1 point if terminal

The total number of points allowable is 44.

**LEVELS OF CARE SERVICE LIMITS**

- Level A- 5 points to 9 points- 2 hours per day or 62 hours per month
- Level B- 10 points to 17 points- 3 hours per day or 93 hours per month
- Level C- 18 points to 25 points- 4 hours per day or 124 hours per month
- Level D- 26 points to 44 points- 5 hours per day or 155 hours per month

**VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points the individual obtains on the PAS assessment tool.
- 2) The Claimant received 23 points on a PAS completed by WVMI in February 2007 in conjunction with an annual reevaluation.
- 3) While testimony reveals that the Claimant's condition is deteriorating, no additional points are awarded for total care in the areas of bathing, dressing and grooming. The Claimant received the correct rating (physical assistance) based on her reported abilities in these areas at the time of the assessment. The issue of mental disorder is moot since 26 points are required to qualify for a Level "D" Level of Care.
- 4) The Claimant's total number of points remains at 23, which is indicative of a Level of Care "C" and renders the Claimant eligible for four (4) hours per day or 124 hours per month of homemaker service hours.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 9th Day of May, 2007.**

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**Pamela L. Hinzman  
State Hearing Officer**